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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-

UNITED STATES OF AMERICA, PETITIONER

v.

RICHARD M. NIXON, PRESIDENT OF THE UNITED STATES, ET AL., RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND SUGGESTION FOR EXPEDITED SCHEDULE

The Special Prosecutor, on behalf of the United States, petitions for a writ of certiorari before judgment to the United States Court of Appeals for the District of Columbia Circuit.[1]

If the petition is granted, the Special Prosecutor suggests, in view of the imperative public importance that the issues herein be resolved during the present Term of the Court, that the Court expedite the sched-

[1] Under 28 U.S.C. 510, 517, and 518, and Department of Justice Order No. 551-73, 28 C.F.R. § 0.37 *et seq.* (App. B, pp. 26-34, *infra*), the Special Prosecutor has authority, in lieu of the Solicitor General, to conduct litigation before this Court on behalf of the United States in cases within his jurisdiction.

ule for briefing and argument. In this regard, the Special Prosecutor would suggest that the brief for petitioner be filed on June 7, 1974, and any briefs for respondents on June 7, 1974—all briefs to be filed initially in typewritten form, but to be replaced as soon as possible with printed briefs. The Special Prosecutor further would suggest that the Court hear argument in this case as soon after the filing of briefs as is consistent with the Court's calendar.

OPINION BELOW

The district court's opinion and order of May 20, 1974, denying the motion to quash the subpoena and enforcing compliance with it (Appendix A, *infra*, pp. 15–23) are not yet officially reported.

JURISDICTION

The order of the district court sought to be reviewed was entered on May 20, 1974, in *United States* v. *Mitchell, et al.* (D.D.C. Crim. No. 74–110). On May 24, 1974, respondent Richard M. Nixon, President of the United States, filed a timely notice of appeal from that order in the district court,[2] and that same day the certified record from the district court was docketed in the United States Court of Appeals for the District of Columbia Circuit (No. 74-1534). The jurisdiction of

[2] In *Nixon* v. *Sirica*, 487 F. 2d 700, 707 n.21 (D.C. Cir. 1973), the court of appeals stated that an order of this type directed to the President is appealable under 28 U.S.C. 1291. In any event, the court of appeals has jurisdiction pursuant to the All Writs Act, 28 U.S.C. 1651. See 487 F. 2d at 706–707.

On May 24, 1974, the President also filed a petition for a writ of mandamus in the court below seeking review of the district court's order in this additional way. This case is docketed as D.C. Cir. No. 74–1532.

this Court to review the instant case, which is now pending in the court of appeals (see *Gay* v. *Ruff*, 292 U.S. 25, 30), is invoked under 28 U.S.C. 1254(1) and 2101(e). See *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579; *United States* v. *United Mine Workers*, 330 U.S. 258, 269. In both *Youngstown Sheet & Tube Co.* v. *Sawyer* and *United States* v. *United Mine Workers*, a writ of certiorari was granted before final judgment in the court of appeals at the instance of the party that had prevailed in the district court.

QUESTIONS PRESENTED

1. Whether the President, when he has assumed sole personal and physical control over evidence demonstrably material to the trial of charges of obstruction of justice in a federal court, is subject to a judicial order directing compliance with a subpoena *duces tecum* issued on the application of the Special Prosecutor in the name of the United States.

2. Whether a federal court is bound by the assertion by the President of an absolute "executive privilege" to withhold demonstrably material evidence from the trial of charges of obstruction of justice by his own White House aides and party leaders, upon the ground that he deems production to be against the public interest.

3. Whether a claim of executive privilege based on the generalized interest in the confidentiality of government deliberations can block the prosecution's access to evidence material and important to the trial of charges of criminal misconduct by high government officials who participated in those deliberations, particularly where there is a *prima facie* showing

that the deliberations occurred in the course of the criminal conspiracy charged in the indictment.

4. Whether any executive privilege that otherwise might have been applicable to discussions in the offices of the President concerning the Watergate matter has been waived by previous testimony pursuant to the President's approval and by the President's public release of 1,216 pages of edited transcript of forty-three Presidential conversations relating to Watergate.

5. Whether the district court properly determined that a subpoena *duces tecum* issued to the President satisfies the standards of Rule 17(c) of the Federal Rules of Criminal Procedure because an adequate showing has been made that the subpoenaed items are relevant to issues to be tried and will be admissible in evidence.

CONSTITUTIONAL PROVISIONS, STATUTES, RULE, AND REGULATIONS INVOLVED

The constitutional provisions, statutes, rule and regulations involved, which are set forth in Appendix B, *infra*, pp. 24–38, are:

Constitution of the United States:
- Article II, Section 1
- Article II, Section 2
- Article II, Section 3
- Article III, Section 2

Statutes of the United States:
- 5 U.S.C. 301
- 28 U.S.C. 509, 510, 515–519

Rule:
- Rule 17(c), Federal Rules of Criminal Procedure

Regulations:
- Department of Justice Order No. 551–73 (November 2, 1973), 38 Fed. Reg. 30,738, adding 28 C.F.R. §§ 0.37, 0.38, and Appendix to Subpart G–1
- Department of Justice Order No. 554–73 (November 19, 1973), 38 Fed. Reg. 32,805, amending 28 C.F.R. Appendix to Subpart G–1

STATEMENT

This case presents for review the denial of a motion filed on behalf of respondent Richard M. Nixon, President of the United States, pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure, seeking to quash a subpoena *duces tecum* issued in a criminal case, directing the President to produce "tapes and other electronic and/or mechanical recordings and reproductions, and any memoranda, papers, transcripts, and other writings" relating to sixty-four specifically described conversations (Appendix C, *infra*, pp. 39–46).

1. On March 1, 1974, a grand jury of the United States District Court for the District of Columbia returned an indictment charging respondents John N. Mitchell, H. R. Haldeman, John D. Ehrlichman, Charles W. Colson, Robert C. Mardian, Kenneth W. Parkinson and Gordon Strachan with various offenses relating to the Watergate matter, including a con-

spiracy to defraud the United States and to obstruct justice.[3] The subpoena *duces tecum* in question was issued by the district court on April 18, 1974, upon the motion of the Special Prosecutor as Attorney for the United States and was made returnable on May 2, 1974. (Appendix D, *infra,* pp. 47–48). The subpoena called for production of the evidence in advance of the September 9, 1974 trial date in order to allow time for any litigation over the subpoena and for transcription and authentication of any tape recordings produced. Several defendants joined in the subpoena.

On May 1, 1974, President Nixon, through his White House counsel, filed a "special appearance" and motion to quash the subpoena. Subsequent proceedings, at the joint suggestion of counsel for the President and the Special Prosecutor and with the approval of counsel for the defendants, were held *in camera* because of some especially sensitive matters submitted to the district court by the Special Prosecutor in opposition to the motion to quash. Although only defendants Colson, Mardian and Strachan formally joined in the Special Prosecutor's motion for

[3] At some or all of the times in question, respondent Mitchell, a former Attorney General of the United States, was Chairman of the Committee for the Re-election of the President. Respondent Haldeman was Assistant to the President and chief of staff. Respondent Ehrlichman was Assistant to the President for Domestic Affairs. Respondent Colson was Counsel to the President. Respondent Mardian, a former Assistant Attorney General, was an official of the President's re-election campaign. Respondent Parkinson was an attorney for the re-election committee. And respondent Strachan was Staff Assistant to the President.

issuance of the subpoena, all seven defendants (respondents herein) argued in opposition to the motion to quash at the hearing in the district court. At that hearing, further motions to expunge and for protective orders, relating to the information submitted by the Special Prosecutor, were filed or raised orally by counsel for the President.

2. In its opinion and order of May 20, 1974, the district court denied the motion to quash and the motions to expunge and for protective orders. It further ordered "the President or any subordinate officer, official or employee with custody or control of the documents or objects subpoenaed" to deliver to the court on or before May 31, 1974, the originals of all subpoenaed items as well as an index and analysis of those items, together with tape copies of those portions of the subpoenaed recordings for which transcripts had been released to the public by the President on April 30, 1974. The district court stayed its order pending appellate review on the condition that appellate review was sought before 4:00 p.m. on May 24, 1974, and further provided that matters filed under seal remain under seal when transmitted as part of the record.

In requiring compliance with the subpoena *duces tecum,* the district court rejected the contention by counsel for the President that it had no jurisdiction because the proceeding allegedly involved solely an intra-executive dispute. The court ruled that this argument lacked substance in light of jurisdictional responsibilities and independence with which the Special Prosecutor has been vested by regulations that have

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the force and effect of law and that had received the explicit concurrence of the President.[4] The court emphasized the "unique guarantee of unfettered operation" given to the Special Prosecutor and noted that under these regulations, as amended and explained by the Acting Attorney General (App. B, *infra*, pp. 37–38), the Special Prosecutor's jurisdiction, which includes express authority to contest claims of executive privilege, cannot be limited without the President's first consulting with the leaders of both Houses of Congress and the respective Committees on the Judiciary and securing their consensus. In these circumstances, the court found that there exists sufficient independence to provide the court with a concrete legal controversy between adverse parties and not simply an intra-agency dispute over policy.[5]

On the merits, and relying on the *en banc* decision in *Nixon* v. *Sirica*, 487 F. 2d 700 (D.C. Cir. 1973), the district court held that in the circumstances of this case, the courts, and not the President, are the final

[4] The validity of these regulations establishing the authority of the Special Prosecutor has been upheld in three other cases, in addition to the decision below. See *Nader* v. *Bork*, 366 F. Supp. 104 (D.D.C. 1973); *United States* v. *Ehrlichman*, —— F. Supp. —— (D.D.C. Crim. No. 74-116) (May 21, 1974); *United States* v. *Andreas*, —— F. Supp. —— (D. Minn. No. 4-73-Cr. 201) (March 12, 1974).

The regulations are reprinted in Appendix B, *infra*, pp. 29–38.

[5] The court later held that as the recipient of a subpoena in this criminal case, the President "as a practical matter, is a third party" (Appendix A, *infra*, p. 19).

As this Court noted in *Berger* v. *United States*, 295 U.S. 78, 88, the prosecuting attorney in a federal criminal case represents the United States as a sovereign government.

arbiter of the applicability of a claim of executive privilege for the subpoenaed items. Here, the court ruled, the presumptive privilege for documents and materials reflecting executive deliberations was overcome by the Special Prosecutor's *prima facie* showing that the items are relevant and important to the issues to be tried in the Watergate cover-up case and that they will be admissible in evidence.[6]

Finally, the district court held that the Special Prosecutor, in his memorandum and appendix below, satisfied the requirements of Rule 17(c) that the subpoenaed items be relevant and evidentiary. See *Bowman Dairy Co.* v. *United States*, 341 U.S. 214.

3. The President has sought review of this decision in the court of appeals and the Special Prosecutor, on behalf of the United States, seeks certiorari before judgment.

REASONS FOR GRANTING THE WRIT

1. It is the position of the Special Prosecutor that the decision of the district court, relying on *Nixon* v. *Sirica, supra*, is fully in accord with constitutional principles first enunciated in *Marbury* v. *Madison*, 1 Cranch 137, and *United States* v. *Burr*, 25 Fed. Cas. 30 (No. 14,692d) (C.C.D. Va. 1807), and repeatedly reaffirmed by this Court, as recently as the decision in *Environmental Protection Agency* v. *Mink*, 410 U.S.

[6] As to the claims by defendants that they are entitled to the subpoenaed items under Rule 17(c), the court withheld ruling, stating that defendants' requests for access will be more appropriately considered in conjunction with their pretrial discovery motions.

73. See also *United States* v. *Reynolds*, 345 U.S. 1; *Youngstown Sheet & Tube Co.* v. *Sawyer, supra.* We believe these authorities support the principle that the President is amenable to judicial orders directing the performance of legal duties. Furthermore, we submit that they also demonstrate that, when a claim of executive privilege is interposed in a lawsuit, the courts have the ultimate power to decide whether that privilege has been properly invoked and whether, under all the circumstances, it should be accepted. The Executive's determination is not conclusive.'

Nevertheless, the constitutional issues involved in this case are exceedingly important, both in their own right and in the context of the litigation in which they arise. The case involves basic constitutional issues arising out of the doctrine of the separation of powers and the powers of the Judiciary and the prerogatives of the Chief Executive. Perhaps more fundamentally, this case also presents a question of overriding concern to the full and impartial administration of justice—is our constitutional system of government sufficiently resilient to permit the Executive Branch to establish an independent prosecutor fully capable of investigating and prosecuting allegations of criminal misconduct by officials in the Executive Office of the President, and validly authorized to

[1] It is possible that the President is now foreclosed from contesting in this case the issues finally decided in *Nixon* v. *Sirica, supra*, a related proceeding between essentially the same parties. See, *e.g.*, *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381, 402–404.

resort to the judicial process to secure physical evidence from the President himself.

Whether the President is amenable to the judicial process, whether the President or the courts have the ultimate authority to determine the applicability of "executive privilege" to material evidence for judicial proceedings, whether executive privilege can be invoked in the face of a *prima facie* showing that the conversations at issue involved a criminal enterprise, whether any confidentiality privilege for Watergate-related conversations has been irretrievably waived by the President, and whether the President has been properly ordered to comply with the instant subpoena—are all issues worthy of review by this Court.

2. Moreover, it is of imperative public importance that this case be resolved as quickly as possible to permit the trial in the "Watergate cover-up case," *United States* v. *Mitchell, et al.*, to proceed as scheduled on September 9, 1974. If the decision below were to proceed through normal appellate processes, it is likely that there would be no final decision in the court of appeals prior to the end of the current Term of this Court. Assuming that this Court thereafter were not to convene a Special Term to hear this case, the case then could not be heard and disposed of by this Court until the late Fall of this year. Accordingly, the trial could not proceed until the spring of 1975, particularly if the district court's decision is upheld and the district court must conduct *in camera* proceedings to determine which items, if any, are to

be produced to the government or defense. In addition, the trial would have to await the transcription of any recordings produced for use at trial. All in all, at a minimum there would be a delay of six months in the start of the trial.

Immediate consideration of the case by this Court during the present Term would not sacrifice any benefits of intermediate appellate review. The Court of Appeals for the District of Columbia Circuit previously has considered and ruled at length on the principal constitutional issues presented for review by this petition. See *Nixon* v. *Sirica, supra.* Indeed, in his Memorandum in Support of the President's Motion to Quash Subpoena Duces Tecum filed in the district court, counsel for the President stated (pp. 1–2): "We recognize that at the present stage of this case these [constitutional] contentions are foreclosed by the decision in *Nixon* v. *Sirica,* —— U.S. App. D.C. ——, 487 F. 2d 700 (1973). Thus we do not now press these points, but mention them here in order that they may be preserved should it be necessary for this case to reach a court in which *Nixon* v. *Sirica* is not controlling precedent."

Thus, this case satisfies the standards of Rule 20 of this Court's rules for granting certiorari before judgment as those standards have been articulated in the cases therein cited.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted and the case set for briefing and argument this Term.

Respectfully submitted.

LEON JAWORSKI,
Special Prosecutor.
PHILIP A. LACOVARA,
Counsel to the Special Prosecutor.
JAMES F. NEAL,
Special Assistant to the Special Prosecutor.

MAY 1974.

APPENDIX A

In the United States District Court for the District of Columbia

Criminal No. 74–110

UNITED STATES OF AMERICA

v.

JOHN N. MITCHELL, ET AL.

(Filed: May 20, 1974, James F. Davey, Clerk)

OPINION AND ORDER

This matter comes before the Court on motion of President Richard M. Nixon to quash a subpoena *duces tecum* issued to him by the Watergate Special Prosecutor with leave of this Court.

On April 16, 1974, Special Prosecutor Leon Jaworski moved the Court for an order, pursuant to Rule 17(c),[1] Federal Rules of Criminal Procedure, directing the issuance of a subpoena for the produc-

[1] Rule 17. Subpoena: "(c) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys."

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tion of specified materials prior to trial in the case of *United States* v. *John N. Mitchell, et al.*, CR 74–110, DDC.[2] The proposed subpoena, prepared by the Special Prosecutor and directed to the President "or any subordinate officer, official, or employee with custody or control of the documents or objects" described, listed in 46 paragraphs the specific meetings and telephone conversations for which tape recordings and related writings were sought. Relying on the legal memorandum and affidavit of the Special Prosecutor in support of the motion, the Court on April 18, 1974, ordered that the subpoena issue forthwith to the President commanding production before the Court.

Prior to the May 2, 1974, return date of the subpoena, the President filed a Special Appearance and Motion to Quash (eo nomine) which included a formal claim of privilege against disclosure of all subpoenaed items generally as "confidential conversations between a President and his close advisors that it would be inconsistent with the public interest to produce."[3] Thereafter, within time limits fixed by the Court, the Special Prosecutor and five defendants filed papers opposing the President's motion to quash on various

[2] The motion asked that the subpoenaed materials be ordered produced before the Court with permission granted to Government attorneys to inspect them. Three of the seven defendants in United States v. Mitchell have filed motions joining in that of the Special Prosecutor with the stipulation that materials produced be made available to the defendants in full. A fourth defendant filed a response in support of the subpoena, but in opposition to the Special Prosecutor's motion insofar as it failed to assure defendants access to the materials upon production.

[3] The document noted, however, that "[p]ortions of twenty of the conversations described in the subpoena have been made public and no claim of privilege is advanced with regard to those Watergate-related portions of those conversations."

grounds.[4] The government's submission, containing a lengthy and detailed showing of its need for the subpoenaed items and their relevance, has been placed under seal as have the various reply briefs and motions for protective orders and to expunge that were subsequently filed.[5] The matter came on for oral argument *in camera* on May 13, 1974.

In entering a special appearance, the President contends that the Court lacks jurisdiction to enforce the instant subpoena on two grounds: First, courts are without authority to rule on the scope or applicability of executive privilege when asserted by the President, and Second, a dispute between the President and Special Prosecutor regarding the production of evidence is an intra-branch controversy wholly within the jurisdiction of the executive branch to resolve. The first contention, as the President admits, is without legal force in this Circuit.[6] See *Nixon* v. *Sirica*, —— U.S. App. D.C. ——, 487 F. 2d 700 (1973).

[4] Defendant Strachan also filed a motion for an order directing the issuance of a subpoena identical to that of the Special Prosecutor in the event that enforcement of the government subpoena is abandoned.

[5] Although initially accepted under the seal, the Court has released those portions of briefs relating to the jurisdictional issue of "intra-executive controversy" discussed in the text below.

The Court has granted a motion of the Special Prosecutor made pursuant to Rule 6(e), Federal Rules of Criminal Procedure, for leave to disclose grand jury proceedings as necessary in support of the subpoena with the proviso urged by defense counsel that, for the present, such disclosures not be made public.

[6] The President has asserted the point to preserve it, in his words, "should it be necessary for this case to reach a court in which *Nixon* v. *Sirica* is not a controlling precedent."

The second argument, whatever its merits in the setting of a disagreement between the President and a cabinet officer, for example, has no application to the present situation. The current Special Prosecutor is vested with the powers and authority conferred upon his predecessor pursuant to regulations which have the force of law.[7] Among other prerogatives, the Special Prosecutor has "full authority" to determine "whether or not to contest the assertion of 'Executive Privilege' or any other testimonial privilege." The Special Prosecutor's independence has been affirmed and reaffirmed by the President and his representatives,[8] and a unique guarantee of unfettered operation accorded him: "the jurisdiction of the Special Prosecutor will not be limited without the President's first consulting with such Members of Congress [the leaders of both Houses and the respective Committees on the Judiciary] and ascertaining that their consensus is in accord with his proposed action."[9] The Pres-

[7] *Nader* v. *Bork*, 366 F. Supp. 104 (DDC 1973). Former Special Prosecutor Archibald Cox received a delegation of powers and responsibilities from the Attorney General acting by authority of 28 U.S.C. §§ 509, 510 and 5 U.S.C. § 301. The terms of this delegation were promulgated by Department of Justice Order No. 517-73, 38 Fed. Reg. 14,688 (June 4, 1973) and reaffirmed as to Mr. Jaworski in Department of Justice Order No. 551-73, 38 Fed. Reg. 30,738 (November 7, 1973).

[8] *See, e.g., The President's News Conference of October 26, 1973*, 9 Weekly Compilation of Presidential Documents, p. 1289 (Oct. 29, 1973); Letter of Acting Attorney General Robert H. Bork to Leon Jaworski, Esq. dated November 21, 1973; and Hearings Before the Senate Committee on the Judiciary on the Special Prosecutor, 93rd Cong., 1st Sess., pt. 2, pp. 571-573.

[9] Department of Justice Order No. 554-73, 38 Fed. Reg. 32,805 (November 27, 1973).

ident not having so consulted, to the Court's knowledge, his attempt to abridge the Special Prosecutor's independence with the argument that he cannot seek evidence from the President by court process is a nullity and does not defeat the Court's jurisdiction.

The President advances three principal arguments on the merits supporting his motion to quash. Primary among these is his assertion that the subpoena, together with the Special Prosecutor's showing of relevancy and evidentiary value filed May 10, 1974, fails to comply with the requirements of Rule 17(c). It is conceded by all parties that Rule 17(c) cannot be employed as a vehicle for discovery, and that a showing of good cause is necessary. The landmark cases interpreting Rule 17(c), *Bowman Dairy Company* v. *United States*, 341 U.S. 214 (1951) and *United States* v. *Iozia*, 13 F.R.D. 335 (SDNY 1952), are cited and relied upon by both sides. Basically, good cause under Rule 17(c) requires a showing that (1) subpoenaed materials are evidentiary and relevant; (2) they are not otherwise procurable reasonably in advance of trial; (3) the party cannot properly prepare for trial without them, and failure to obtain them may delay the trial; and (4) the application is made in good faith, and does not constitute a "fishing expedition." See *United States* v. *Iozia, supra*, 13 F.R.D. at 338. It is the Court's position that the Special Prosecutor's May 10, 1974 memorandum correctly applies the Rule 17(c) standards, particularly in the more unusual situation of this kind where the subpoena, rather than being directed to the government by defendants, issues to what, as a practical matter, is a third party. It is the Court's conclusion as well, supported again by reference to the Special Prosecutor's memorandum

and appendix, that the requirements of Rule 17(c) are here met.[10]

With regard to the confidentiality privilege interposed by the President, the Court agrees that his claim is presumptively valid. The Special Prosecutor's submissions, however, in the Court's opinion, constitute a *prima facie* showing adequate to rebut the presumption in each instance, and a demonstration of need sufficiently compelling to warrant judicial examination in chambers incident to weighing claims of privlege where the prvilege has not been relinquished.[11] In citing relinquishment of privilege, the Court has reference to the portions of subpoenaed recordings which the President has caused to be re-

[10] The *Nixon* v. *Sirica* case, arising out of the grand jury investigation which produced the indictment herein, presented circumstances warranting the Court's *in camera* inspection of subpoenaed items. 487 F. 2d at 718, 719. The need for evidence presented here is, if anything, more compelling since the matter has developed into a criminal trial where the standard of proof is not simply probable cause but proof beyond a reasonable doubt, and where defendants confront a more direct threat to their reputations and liberty. The President contends that because the Special Prosecutor would not have commenced this case without evidence sufficient, in his opinion, to convict the defendants, the need for other evidence is insubstantial. Such an argument, however, ignores the fact not only that it is the Special Prosecutor alone, in this instance, who has the duty to determine the quantity and quality of evidence necessary to prosecute, but that the Prosecutor has an obligation to obtain and present *all* the relevant evidence. It has never been the law that once an indictment issues, evidence beyond that at hand is unnecessary and should not be sought.

[11] In this connection, it is significant that although the Special Prosecutor is forced in part to rest his showing on circumstantial evidence, having been denied access to the material solicited, in the approximately 20 instances where contents of subpoenaed tapes have been made public, the Prosecutor's assertions that

duced to transcript form and published. For such, the Court finds the privilege claimed non-existent since the conversations are, to that extent at least, no longer confidential. See *Nixon* v. *Sirica,* supra, 487 F. 2d at 718.

The President's third argument on the merits speaks to the defendants' contention that the subpoenaed materials are necessarily producible to them under the principles enunciated in *Brady* v. *Maryland,* 373 U.S. 83 (1963) and its progeny, the Jencks Act, 18 U.S.C. § 3500, and rules of discovery for criminal proceedings. The President maintains instead that defendants cannot require production under *Brady* of material in the possession of a non-investigatory government agency or items made unavailable because of their privileged character. The Court finds it unnecessary,

"Watergate" was discussed have been shown accurate without exception. Counsel for the President is unable to state that other subpoenaed items are or are not relevant to this case because he has not seen or heard them. (Transcript of Proceedings In Camera, May 13, 1974, pp. 61, 62.) Nevertheless, he cites the President's April 29, 1974 public characterization of edited transcripts produced from tape recordings including some of those here subpoenaed:

"They include all the relevant portions of all of the subpoenaed conversations that were recorded—that is, all portions that relate to the question of what I knew about Watergate or the cover-up, and what I did about it. They also include transcripts of other conversations which were not subpoenaed, but which have a significant bearing on the question of Presidential actions with regard to Watergate.

* * * * *

"As far as what the President personally knew and did with regard to Watergate and the cover-up is concerned, these materials—together with those already made available—will tell it all."

Be that as it may "what the President personally knew and did" is not dispositive of the issues in this case.

due to its disposition of the motion to quash, to reach this question. Under Rule 17(c), the Court "may permit" the materials produced "to be inspected by the parties or their attorneys." The Court intends to supply defense counsel with any and all exculpatory matter that may be found in the items produced, and to deliver any and all non-privileged matter to the Special Prosecutor. It is, of course, the Special Prosecutor's continuing obligation to furnish defendants with *Brady* material that comes into his possession. Defendants' requests for access to the whole of materials produced will be more appropriately considered in conjunction with their pretrial discovery motions.

In requiring compliance with the subpoena, that is, production before the Court, and in ruling on claims of privilege, the Court adopts in full the procedures and criteria established by the United States Court of Appeals for this Circuit in *Nixon* v. *Sirica, supra,* 487 F. 2d at 716–721 (parts IV, V, and VI of the majority opinion). Thus, adequate time will be allowed for preparation of an index and analysis detailing particular claims of privilege the President wishes to make. The originals of all subpoenaed items will accompany the index and analysis when transmitted to the Court. In addition, a separate tape recording, copies from the originals, containing only those portions of conversations since transcribed and made public should be prepared and delivered along with the subpoenaed materials.

To protect the rights of individuals, various of the proceedings and papers concerning this subpoena have been sealed. Such matters will remain under seal, and all persons having knowledge of them will remain subject to restrictions of confidentiality imposed upon them pending further order of the Court. The foregoing, of course, does not affect the transmittal of such materials to appellate courts under seal as a necessary part of the record in this matter. The Court sees no need to grant more extensive protective orders at this time or to expunge portions of the record. Matter sought to be expunged is relevant, for example, to a determination that the presumption of privilege is overcome.

Now, therefore, it is by the Court this 20th day of May, 1974,

ORDERED that the President's motion to quash be, and the same hereby is, denied; and it is

FURTHER ORDERED that on or before May 31, 1974, the President or any subordinate officer, official, or employee with custody or control of the documents or objects subpoenaed by the Special Prosecutor with leave of Court on April 18, 1974, shall deliver to the Court the originals of all subpoenaed items together with an index and analysis and copy tape recording as described in the foregoing opinion; and it is

FURTHER ORDERED that motions for protective orders and to expunge filed or raised orally in this matter, except to the extent already granted by the Court in proceedings heretofore, be, and the same hereby are, denied; and it is

FURTHER ORDERED that should the President initiate appellate review of the Court's order prior to 4:00 p.m., Friday, May 24, 1974, the Court's order shall be stayed pending the completion of such review.

JOHN J. SIRICA,
United States District Judge.

548-530—74——4

APPENDIX B

APPLICABLE PROVISIONS OF CONSTITUTION, STATUTES, RULES, AND REGULATIONS

1. The Constitution of the United States provides in pertinent part—

Article II, Section 1:

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

* * * * *

Article II, Section 2:

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves, and Pardons for Offenses against the United States, except in Cases of Impeachment;

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein

otherwise provided for, and which shall be established by law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

* * * * *

Article II, Section 3:

* * * he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faihfully executed, and shall Commission all the Officers of the United States.

Article III, Section 2:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or subjects.

* * * * *

2. Title 5, United States Code, provides in pertinent part—

§ 301. DEPARTMENT REGULATIONS.

The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withhold-

ing information from the public or limiting the availability of records to the public. Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 379.

Title 28, United States Code, provides in pertinent part—

§ 509. FUNCTIONS OF THE ATTORNEY GENERAL.

All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General except the functions—

(1) vested by subchapter II of chapter 5 of title 5 in hearing examiners employed by the Department of Justice;

(2) of the Federal Prison Industries, Inc.;

(3) of the Board of Directors and officers of the Federal Prison Industries, Inc.; and

(4) of the Board of Parole.

§ 510. DELEGATION OF AUTHORITY.

The Attorney General may from time to time make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice of any function of the Attorney General.

§ 515. AUTHORITY FOR LEGAL PROCEEDINGS; COMMISSION, OATH, AND SALARY FOR SPECIAL ATTORNEYS.

(a) The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which United States attorneys are authorized by law to conduct, whether

or not he is a resident of the district in which the proceeding is brought.

* * * * *

§ 516. CONDUCT OF LITIGATION RESERVED TO DEPARTMENT OF JUSTICE.

Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice, under the direction of the Attorney General.

§ 517. INTERESTS OF THE UNITED STATES IN PENDING SUITS.

The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.

§ 518. CONDUCT AND ARGUMENT OF CASES.

(a) Except when the Attorney General in a particular case directs otherwise, the Attorney General and the Solicitor General shall conduct and argue suits and appeals in the Supreme Court and suits in the Court of Claims in which the United States is interested.

(b) When the Attorney General considers it in the interests of the United States, he may personally conduct and argue any case in a court of the United States in which the United States is interested, or he may direct the Solicitor General or any officer of the Department of Justice to do so.

§ 519. SUPERVISION OF LITIGATION.

Except as otherwise authorized by law, the Attorney General shall supervise all litigation

to which the United States, an agency, or officer thereof is a party, and shall direct all United States attorneys, assistant United States attorneys, and special attorneys appointed under section 543 of this title in the discharge of their respective duties.

3. Rule 17, Federal Rules of Criminal Procedure, provides in pertinent part—

SUBPOENA

* * * * *

(c) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

* * * * *

4. Department of Justice Order No. 551-73 (Nov. 2, 1973) 38 Fed. Reg. 30,738 adding 28 C.F.R. §§ 0.37, and 0.38, and Appendix to Subpart G-1, provides

TITLE 28—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

Part O—Organization of the Department of Justice

Order No. 551-73

ESTABLISHING THE OFFICE OF WATERGATE SPECIAL PROSECUTION FORCE

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, there is hereby established in the Department of Justice, the Office of Watergate Special Prosecution Force, to be headed by a Director. Accordingly, Part O of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.1(a) which lists the organization units of the Department, is amended by adding "Office of Watergate Special Prosecution Force" immediately after "Office of Criminal Justice."

2. A new Subpart G-1 is added immediately after Subpart G, to read as follows:

"Subpart G-1—Office of Watergate Special Prosecution Force

§ 0.37 GENERAL FUNCTIONS.

The Office of Watergate Special Prosecution Force shall be under the direction of a Director who shall be the Special Prosecutor appointed by the Attorney General. The duties and re-

sponsibilities of the Special Prosecutor are set forth in the attached appendix which is incorporated and made a part hereof.

§ 0.38 SPECIFIC FUNCTIONS.

The Special Prosecutor is assigned and delegated the following specific functions with respect to matters specified in this Subpart:

(a) Pursuant to 28 U.S.C. 515(a), to conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings, which United States attorneys are authorized by law to conduct, and to designate attorneys to conduct such legal proceedings.

(b) To approve or disapprove the production or disclosure of information or files relating to matters within his cognizance in response to a subpoena, order, or other demand of a court or other authority. (See Part 16(B) of this chapter.)

(c) To apply for and to exercise the authority vested in the Attorney General under 18 U.S.C. 6005 relating to immunity of witnesses in Congressional proceedings.

The listing of these specific functions is for the purpose of illustrating the authority entrusted to the Special Prosecutor and is not intended to limit in any manner his authority to carry out his functions and responsibilities."

ROBERT H. BORK,
Acting Attorney General.

Date: November 2, 1973.

Appendix

DUTIES AND RESPONSIBILITIES OF THE SPECIAL PROSECUTOR

The Special Prosecutor

There is appointed by the Attorney General, within the Department of Justice, a Special Prosecutor to whom the Attorney General shall delegate the authorities and provide the staff and other resources described below.

The Special Prosecutor shall have full authority for investigating and prosecuting offenses against the United States arising out of the unauthorized entry into Democratic National Committee Headquarters at the Watergate, all offenses arising out of the 1972 Presidential Election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White House staff, or Presidential appointees, and any other matters which he consents to have assigned to him by the Attorney General.

In particular, the Special Prosecutor shall have full authority with respect to the above matters for:

—conducting proceedings before grand juries and any other investigations he deems necessary;
—reviewing all documentary evidence available from any source, as to which he shall have full access;
—determining whether or not to contest the assertion of "Executive Privilege" or any other testimonial privilege;

—determining whether or not application should be made to any Federal court for a grant of immunity to any witness, consistently with applicable statutory requirements, or for warrants, subpoenas, or other court orders;

—deciding whether or not to prosecute any individual, firm, corporation or group of individuals;

—initiating and conducting prosecutions, framing indictments, filing informations, and handling all aspects of any cases within his jurisdiction (whether initiated before or after his assumption of studies), including any appeals;

—coordinating and directing the activities of all Department of Justice personnel, including United States Attorneys;

—dealing with and appearing before Congressional committees having jurisdiction over any aspect of the above matters and determining what documents, information, and assistance shall be provided to such committees.

In exercising this authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the Attorney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions. The Special Prosecutor will determine whether and to what extent he will inform or consult with the Attorney General about the conduct of his duties and responsibilities. In accordance with assurances given by the President to the Attorney General that the President will not

exercise his Constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence that he is hereby given, the Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part and without the President's first consulting the Majority and the Minority Leaders and Chairmen and ranking Minority Members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their consensus is in accord with his proposed action.

Staff and Resource Support

1. *Selection of Staff.*—The Special Prosecutor shall have full authority to organize, select, and hire his own staff of attorneys, investigators, and supporting personnel, on a full or part-time basis, in such numbers and with such qualifications as he may reasonably require. He may request the Assistant Attorneys General and other officers of the Department of Justice to assign such personnel and to provide such other assistance as he may reasonably require. All personnel in the Department of Justice, including United States Attorneys, shall cooperate to the fullest extent possible with the Special Prosecutor.

2. *Budget.*—The Special Prosecutor will be provided with such funds and facilities to carry out his responsibilities as he may reasonably require. He shall have the right to submit budget requests for funds, positions, and other assistance, and such requests shall receive the highest priority.

3. *Designation and Responsibility.*—The personnel acting as the staff and assistants of the Special Prosecutor shall be known as the Watergate Special Prosecution Force and shall be responsible only to the Special Prosecutor.

Continued Responsibilities of Assistant Attorney General, Criminal Division.—Except for the specific investigative and prosecutorial duties assigned to the Special Prosecutor, the Assistant Attorney General in charge of the Criminal Division will continue to exercise all of the duties currently assigned to him.

Applicable Departmental Policies.—Except as otherwise herein specified or as mutually agreed between the Special Prosecutor and the Attorney General, the Watergate Special Prosecution Force will be subject to the administrative regulations and policies of the Department of Justice.

Public Reports.—The Special Prosecutor may from time to time make public such statements or reports as he deems appropriate and shall upon completion of his assignment submit a final report to the appropriate persons or entities of the Congress.

Duration of Assignment.—The Special Prosecutor will carry out these responsibilities, with the full support of the Department of Justice, until such time as, in his judgment, he has completed them or until a date mutually agreed upon between the Attorney General and himself.

Department of Justice Order No. 554–73 (Nov. 19, 1973) 38 Fed. Reg. 32,805, amending 28 C.F.R. Appendix to Subpart G–1, provides—

OFFICE OF THE ATTORNEY GENERAL,
WASHINGTON, D.C. 20530.

TITLE 28—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

Part O—Organization of the Department of Justice

SUBPART G–1—OFFICE OF WATERGATE SPECIAL PROSECUTION FORCE

Order No. 554–73

AMENDING THE REGULATIONS ESTABLISHING THE OFFICE OF WATERGATE SPECIAL PROSECUTION FORCE

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, the last sentence of the fourth paragraph of the Appendix to Subpart G–1 is amended to read as follows: "In accordance with assurances given by the President to the Attorney General that the President will not exercise his Constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence that he is hereby given, (1) the Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part and without the President's first consulting the Majority and the Minority Leaders and

Chairmen and ranking Minority Members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their consensus is in accord with his proposed action, and (2) the jurisdiction of the Special Prosecutor will not be limited without the President's first consulting with such Members of Congress and ascertaining that their consensus is in accord with his proposed action."

ROBERT H. BORK,
Acting Attorney General.

Date: November 19, 1973.

5. The letter from the Acting Attorney General to the Special Prosecutor on November 21, 1973, stating the intention of Department of Justice Order No. 554–73, is as follows:

OFFICE OF THE SOLICITOR GENERAL,
Washington, D.C. 20530, November 21, 1973.

LEON JAWORSKI, Esq.,
Special Prosecutor,
Watergate Special Prosecution Force,
1425 K Street, N.W.,
Washington, D.C. 20005

DEAR MR. JAWORSKI: You have informed me that the amendment to your charter of November 19, 1973 has been questioned by some members of the press. This letter is to confirm what I told you in our telephone conversation. The amendment of November 19, 1973 was intended to be, and is, a safeguard of your independence.

The President has given his assurance that he would not exercise his constitutional powers either to discharge the Special Prosecutor or to limit the independence of the Special Prosecutor without first consulting the Majority and Minority leaders and chairmen and ranking members of the Judiciary Committees of the Senate and the House, and ascertaining that their consensus is in accord with his proposed action.

When that assurance was worked into the charter, the draftsman inadvertently used a form of words that might have been construed as applying the President's assurance only to the subject of discharge. This was subsequently pointed out to me by an assistant and I had the amendment of November 19 drafted

in order to put beyond question that the assurance given applied to your independence under the charter and not merely to the subject of discharge.

There is, in my judgment, no possibility whatever that the topics of discharge or limitation of independence will ever be of more than hypothetical interest. I write this letter only to repeat what you already know: the recent amendment to your charter was to correct an ambiguous phrasing and thus to make clear that the assurances concerning congressional consultation and consensus apply to all aspects of your independence.

Sincerely,

ROBERT H. BORK,
Acting Attorney General.

APPENDIX C

CO 206
NEW 12/71

Subpoena to Produce Document or Object — *Cr. Form No. 21 (Rev. 10–51)*

United States District Court for the District of Columbia

No. 74–110

UNITED STATES OF AMERICA

v.

JOHN N. MITCHELL, ET AL.

To Richard M. Nixon, The White House, Washington, D.C., or any subordinate officer, official, or employee with custody or control of the documents or objects hereinafter described on the attached schedule.

You are hereby commanded to appear in the United States District Court for the District of Columbia at Constitution Ave. & John Marshall Place in the city of the District of Columbia on the day of 1974 at ten o'clock A.M. to testify in the case of *United States* v. *John N. Mitchell, et al.* and bring with you the documents or objects listed on the attached schedule.

This subpoena is issued upon application of the[1] United States.

APRIL 16, 1974.

LEON JAWORSKI,
Attorney for the United States,
1425 K St. N.W., Washington, D.C.
Address

JAMES F. DAVEY,
Clerk.

By ROBERT L. LINE,
Deputy Clerk.

RETURN

Received this subpoena at on and on at served it on the within named by delivering a copy to h and tendering to h the fee for one day's attendance and the mileage allowed by law.[2]

----------,
By ----------,

Dated:
----------, 19--
Service Fees
Travel -------- $
Services -------- --------
Total ------ $

FPI—LK—8-14-62—120M—998

[1] Insert "United States," or "defendant" as the case may be.

[2] Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825.

SCHEDULE OF DOCUMENTS AND OBJECTS TO BE PRODUCED BY OR ON BEHALF OF RICHARD M. NIXON

All tapes and other electronic and/or mechanical recordings or reproductions, and any memoranda, papers, transcripts, and other writings, relating to:

1. (a) Meeting on June 20, 1972, between the President and Charles W. Colson from 2:20 to 3:30 p.m. in the President's Executive Office Building office ("EOB"); (b) telephone conversation on June 20, 1972, between the President and Mr. Colson from 8:04 to 8:21 p.m. (placed from the EOB); and (c) telephone conversation between the President and Mr. Colson from 11:33 p.m. on June 20, 1972, to 12:05 a.m. on June 21, 1972 (placed from residence portion of the White House).

2. Three meetings on June 23, 1972, between the President and H. R. Haldeman from 10:04 to 10:39 a.m., from 1:04 to 1:13 p.m., and from 2:20 to 2:45 p.m. According to information furnished by the White House, the first meeting occurred in the Oval Office, and the third, in the EOB, with Ronald Ziegler in both cases present for part of the time. According to Mr. Haldeman's logs, the second meeting occurred in the Oval Office.

3. Meeting on the morning of November 15, 1972, among or between Messrs. Haldeman, John Ehrlichman, and John W. Dean, III in the President's office at Camp David.

4. Meeting and telephone conversation on January 5, 1973, between the President and Mr. Colson from 12:02 to 1:02 p.m. in the EOB and from 7:38 to 7:58 p.m. (placed from Camp David) respectively.

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5. Meeting or telephone conversation in or about late January 1973 between the President and Mr. Colson in which E. Howard Hunt, Jr. was discussed.

6. Meetings between the President and Mr. Colson in the Oval Office on February 13, 1973, from 9:48 to 10:52 a.m. and on February 14, 1973, from 10:13 to 10:49 a.m. respectively.

7. Meeting on or about February 20, 1973, between the President and Mr. Haldeman in which Jeb Stuart Magruder was discussed.

8. Meeting on February 27, 1973, between the President and Mr. Dean from 3:55 to 4:20 p.m. in the Oval Office.

9. Meeting on March 17, 1973, between the President and Mr. Dean from 1:25 to 2:10 p.m. in the Oval Office.

10. Meetings on March 20, 1973, between the President and Mr. Haldeman from 10:47 a.m. to 12:10 p.m. (with Mr. Ehrlichman present from 11:40 a.m. on) and from 6:00 to 7:10 p.m. According to Mr. Haldeman's logs, these meetings occurred in the Oval Office.

11. Telephone conversation on March 20, 1973, between the President and Mr. Dean from 7:29 to 7:43 p.m.

12. Meeting on March 21, 1973, between the President and Mr. Ehrlichman from 9:15 to 10:12 a.m. in the Oval Office.

13. Telephone conversation on March 21, 1973, between the President and Mr. Colson from 7:53 to 8:24 p.m.

14. Meeting on March 22, 1973, between the President and Mr. Haldeman from 9:11 to 10:35 a.m. According to Mr. Haldeman's logs, this meeting occurred in the EOB.

15. Meeting on March 27, 1973, between the President and Mr. Ehrlichman from 11:10 a.m. to 1:30 p.m., with Mr. Haldeman present from 11:35 a.m. on. Mr. Ziegler and Stephen B. Bull were also present for parts of the time. According to Mr. Haldeman's logs, this meeting occurred in the EOB.

16. Meeting on March 30, 1973, between the President and Mr. Ehrlichman from 12:02 to 12:18 p.m. Mr. Ziegler may also have been present.

17. Telephone conversation on April 12, 1973, between the President and Mr. Colson from 7:31 to 7:48 p.m. (placed from residence portion of the White House).

18. Meeting on April 14, 1973, between the President and Mr. Ehrlichman from 8:55 to 11:31 a.m. in the EOB, with Mr. Haldeman present from 9:00 to 11:30 a.m.

19. Meeting on April 14, 1973, between the President and Mr. Haldeman from 1:55 to 2:13 p.m. in the Oval Office.

20. Meetings on April 14, 1973, among or between the President and Messrs. Ehrlichman and Haldeman from 2:24 to 3:55 p.m. and from 5:15 to 6:45 p.m. in the Oval Office and the EOB respectively.

21. Telephone conversation on April 14, 1973, between the President and Mr. Haldeman from 11:02 to 11:16 p.m. (placed from residence portion of the White House).

22. Telephone conversation on April 14, 1973, between the President and Mr. Ehrlichman from 11:22 to 11:53 p.m. (placed from residence portion of the White House).

23. Meeting on April 15, 1973, between the President and Mr. Ehrlichman from 10:35 to 11:15 a.m. (time approximate) in the Oval Office.

24. Telephone conversation on April 15, 1973, between the President and Mr. Haldeman from 3:27 to 3:44 p.m. (placed from the EOB).

25. Telephone conversation on April 16, 1973, between the President and Mr. Haldeman from 12:08 to 12:23 a.m. (placed from residence portion of the White House).

26. Telephone conversations on April 16, 1973, between the President and Mr. Ehrlichman from 8:18 to 8:22 a.m. and from 9:27 to 9:49 p.m. (placed from and received in residence portion of the White House respectively).

27. Meetings on April 16, 1973, among or between the President and Messrs. Haldeman and Ehrlichman from 9:50 to 9:59 a.m. and from 10:50 to 11:04 a.m., both in the Oval Office.

28. Meeting on April 16, 1973, between the President and Mr. Haldeman from noon to 12:31 p.m. in the Oval Office.

29. Meeting on April 16, 1973, between the President and Mr. Ehrlichman from 3:27 to 4:02 p.m. in the EOB. Mr. Ziegler was present from 3:35 p.m. on.

30. Meeting on April 17, 1973, between the President and Mr. Haldeman from 9:47 to 9:59 a.m. in the Oval Office.

31. Three meetings on April 17, 1973, among or between the President and Messrs. Haldeman and Ehrlichman from 12:35 to 2:20 p.m. in the Oval Office (with Mr. Ziegler present for part of the time), from 3:50 to 4:35 p.m. in the Oval Office, and from 5:50 to 7:14 p.m. in the EOB (with then Secretary William P. Rogers present for part of the time).

32. Telephone conversation on April 18, 1973, between the President and Mr. Haldeman from 12:05 to 12:20 a.m. (placed from residence portion of the White House).

33. Meeting on April 18, 1973, between the President and Mr. Ehrlichman from 3:05 to 3:23 p.m. in the Oval Office.

34. Meeting on April 18, 1973, among or between the President and Messrs. Haldeman and Ehrlichman from 6:30 to 8:05 p.m. in Aspen Lodge, Camp David.

35. Meeting on April 19, 1973, among or between the President and Messrs. Haldeman and Ehrlichman from 9:31 to 10:12 a.m. in the Oval Office.

36. Metings on April 19, 1973, between the President and Mr. Ehrlichman from 1:03 to 1:30 p.m. and from 5:15 to 5:45 p.m. to the Oval Office and the EOB respectively.

37. Telephone conversation on April 19, 1973, between the President and Mr. Haldeman from 9:37 to 9:53 p.m. (placed from the EOB).

38. Telephone conversation on April 19, 1973, between the President and Mr. Ehrlichman from 10:54 to 11:04 p.m. (received in residence portion of the White House).

39. Meetings on April 20, 1973, between the President and Mr. Haldeman from 8:15 to 8:39 a.m. and from 11:07 to 11:23 a.m., both in the Oval Office.

40. Meeting on April 20, 1973, among or between the President and Messrs. Haldeman and Ehrlichman from 12:16 to 12:34 p.m. in the Oval Office.

41. Meeting on April 25, 1973, among or between the President and Messrs. Haldeman and Ehrlichman from 11:06 a.m. to 1:55 p.m. According to Mr. Haldeman's logs, this meeting occurred in the EOB.

42. Meeting on April 25, 1973, between the President and Mr. Haldeman from 4:40 to 5:35 p.m. According to Mr. Haldeman's logs, this meeting occurred in the EOB.

43. Telephone conversations on April 25, 1973, between the President and Mr. Haldeman from 6:57 to 7:14 p.m. and from 7:46 to 7:53 p.m.

44. Telephone conversations on April 25, 1973, between the President and Mr. Ehrlichman from 7:17 to 7:19 p.m. and from 7:25 to 7:39 p.m.

45. Meetings on April 26, 1973, between the President and Mr. Haldeman from 8:55 to 10:24 a.m. and from 3:59 to 9:03 p.m., the latter with Mr. Ehrlichman present from 5:57

to 7:14 p.m. Messrs. Bull and Ziegler were also present at the second meeting for parts of the time. According to Mr. Haldeman's logs, the first meeting occurred in the Oval Office, and the second, in the EOB.

46. Telephone conversations on June 4, 1973, between the President and Mr. Haldeman from 10:05 to 10:20 p.m. and from 10:21 to 10:22 p.m. (both placed from residence portion of the White House).

APPENDIX D

In the United States District Court for the District of Columbia

(Filed: April 18, 1974, James F. Davey, Clerk)

Crim. Case No. 74–110

UNITED STATES OF AMERICA

v.

JOHN N. MITCHELL, ET AL.

ORDER

Upon consideration of the Motion of the United States for an order, pursuant to Rule 17(c), Federal Rules of Criminal Procedure, permitting the issuance of a subpoena for the production of certain materials before the Court prior to the trial of the above-captioned action, and defendants Charles W. Colson and Robert C. Mardian having joined in said Motion, and the Court having considered the Affidavit and Memorandum submitted in support of said Motion, and the Court having determined that the Motion should be granted, it is hereby this 18th day of April, 1974,

ORDERED that the attached subpoena be issued and made returnable before the Court at 10:00 a.m. on the 2nd day of May, 1974; and it is

FURTHER ORDERED that the United States Marshal for the District of Columbia is directed to serve forthwith a certified copy of this Order and the attached

subpoena on Richard M. Nixon, The White House, Washington, D.C.; and it is

FURTHER ORDERED that delivery to James D. St. Clair, Special Counsel to the President, or any other person of suitable age and discretion at the White House or the Old Executive Office Building, Washington, D.C. on or before the 22nd day of April, 1974, shall be deemed good and sufficient service.

JOHN J. SIRICA,
United States District Judge.

U.S. GOVERNMENT PRINTING OFFICE: 1974